IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 94 of 2002
with
CIVIL APPLICATION NO 413 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KALUBHAI @ CHANDUBHAI KEHLAB- BHAI NAYAKA
Versus
PHOOLSINH PRATAPSINH RAJPUT

Appearance:
1. First Appeal No. 94 of 2002
MR MTM HAKIM for Petitioner No. 1-2
NOTICE SERVED BY DS for Respondent No. 1-2
MS MEGHA JANI for Respondent No. 3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 02/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Mr. Hakim for the appellant, learned advocate Ms.Jani for the respondent No.3. Notice for final disposal has been issued by this court on 21.1.2002 by making it returnable on 4th February, 2002. Theefore, today, the matter has been taken up for final hearing with the consent of both the learned advocates.

In the present appeal, the appellants who are the original claimants have challenged the award made by the Motor Accident Claim Tribunal (Aux), Panchmahals at Godhra wherein the tribunal has directed the original opponents no.2 and 3 that they should pay Rs.1,08,000.00 to the claimants by way of compensation with proportionate costs. The tribunal has not awarded interest on the amount of compensation awarded by it in favour of the appellants original claimants and, therefore, that part of the award has been challenged by the appellants original claimants before this Court by filing the present first appeal.

Learned advocate Mr. Hakim appearing for the appellants claimants has submitted that as per section 171 of the Motor Vehicles Act, 1988, the claimants are entitled to the interest on the amount of compensation but in this case, the tribunal has, while awarding compensation, not granted interest and, therefore, to that extent, the tribunal has committed an error. He has submitted that the tribunal has erred in coming to the conclusion that the compensation is the dependency of future and, therefore, claimants are not entitled for interest on the amount of compensation. He has also submitted that the reasons assigned by the tribunal for not granting interest on the amount of compensation are not cogent and convincing. According to his submissions, looking to the pendency of the matter before the claim tribunal also, the tribunal ought to have granted interest as per section 171 of the Motor Vehicles Act, 1988.

On the other hand, as per the submissions made by Ms.Jani, learned advocate for the respondent, provisions of section 171 of the Motor Vehicles Act are not mandatory but it gives discretion in favour of the Tribunal for considering whether interest should be

awarded on the amount of compensation or not. According to her submissions, it would also depend upon the facts and circumstances of each case and, therefore, the tribunal was right in not granting interest on the amount of compensation awarded by the tribunal in favour of the claimants.

We have perused the award in question. In para 10 of the award in question, the tribunal has discussed the question involved in this first appeal. In para 10, the tribunal has observed that the amount of Rs.90,000.00 forming part and parcel of the amount of compensation is such which their son would have been able to give to them for their maintenance after he become young. The order has been made for payment of such amount now and in such circumstances, the claimants are not entitled for interest on that amount and, therefore, the claimants are not entitled for interest on the amount of compensation. Thus, solely on this ground, the tribunal has not granted interest on the amount of compensation. Relevant section 171 of the Motor Vehicles Act is reproduced as under:

> "171. Award of interest where any claim is allowed.- Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. "

We have perused the order made by the tribunal. According to the facts narrated by the Tribunal in its award in paragraph 2, the claimants No.1 and 2 are the husband and wife and claimant No.1 was receiving income of Rs.1500.00 from the agricultural work; on 8th March, 1993, the claimant NO.1 went to with his son Kishan at village Pania and then returning from the said village, they were standing at the bus stop near Metco Company on the Halol Vadodara Road. At that time, his son Kishon was on the foot path near the road. At about 4.30 hours of the evening, original opponent No.1 had passed through the said place in Maruti Car No. GJ.17.T.1104 driving the said vehicle in excessive speed in a careless and negligent manner and dashed his car with the son of the appellant namely Kishan. Therefore, Kishan had received head injuries. After giving him preliminary treatment, he was shifted in the SSG Hospital, Vadodara but he had not gained consciousness and on 10.3.93, died because of these injuries. As per the para 2 of the award, the original claimants have stated that they are having one

daughter namely Kailash but are not having another son. It has also been alleged the wife of the claimant NO.1 i.e. claimant NO.2 had undergone operation for the family planning. On the basis of the aforesaid facts, the claimants have claimed for compensation of Rs. 1,15,000.00 before the tribunal. Before the tribunal, the original opponents NO.1 and 2 have not remained present though served and, therefore, the tribunal had proceeded ex parte against them. Before the tribunal, respondent No.3 has filed written statement at Exh. 16 and the allegations and averments made in the claim petition were denied. Before the tribunal, one Kalubhai @ Chandubhai Kehlabhai was examined at Exh. 27 and he has produced certain documents on record. Before the tribunal, no one was examined on behalf of the opponent NO. 1. Son Kishan was aged about five years. Case was registered against the opponents on the basis of the medical papers. Inquest Panchanama and the PM Report was produced on record before the tribunal. The tribunal has assessed the income of the deceased boy at Rs.1500.00 per month and thereafter, has considered Rs.500.00 as dependency for a period of fifteen years and has come to the conclusion that the loss of dependency is Rs.90,000.00. The insurance policy was produced at Exh. 30 by opponent NO.3. Insurance policy covered the date of accident. Looking to the observations made by the tribunal and also considering the fact that at the time of death of the minor boy Kishan, he was aged about 3 years and there was no negligence on the part of the deceased boy and on the basis of the said facts, the tribunal has come to the conclusion that the amount of Rs.90,000.00 which has been awarded by the tribunal as loss of dependency would have been received by the claimants in future and instead of that, the tribunal has awarded the said amount at present but the tribunal has lost sight of the fact that the amount which has been decided by the tribunal is based on guess work. No concrete figure can be ascertained in such a situation when the boy was aged only about three years and, therefore, if the boy would hae survived, such estimated amount would have been received by the claimants after the boy would have become major but that does not mean that on such amount of future dependency, the claimants are not entitled for interest. The tribunal has not appreciated one important aspect that all of a sudden, boy aged about three years has died because of the rash and negligent driving on the part of the opponent NO.1 and because of that accident, the claimants lost their only son and because of the family planning operation, they will not be able to have another son. The claim petition was filed on 23rd March, 1993 and was decided by

the tribunal on 11th September, 2001, after about eight years, 5 months and 19 days. It was not the finding of the tribunal that such delay could be attributed to the claimants by saying that the claimants were responsible for such delay. There was no such contention raised by the other side that the delay in deciding the claim petition could be attributed to the claimants. Thus, there was no fault on the part of the claimants for delay caused in deciding the claim petition. So, in absence thereof, it is the duty of the tribunal to award interest on such amount because the tribunal is granting amount of compensation from the date of claim petition and the reason assigned by the tribunal for denying benefit of interest is not germane to the issue. Delay has occurred because of the fact that after recording of the evidence by the another tribunal, the claim petition was transferred to the Motor Accident Claims Tribunal at Godhra. No evidence has been led by the other side. In view of these facts, the claimants who lost their only son of the age of three years in accident and having no other son and keeping in view the family planning operation undergone by the original claimant NO.2, in such circumstances, it was the duty of the tribunal to award interest on the amount of compensation. Merely because the said amount would have been received by the claimants in future if the deceased boy would have survived, cannot be considered to be a ground for denying legal right of receiving interest upon the amount of compensation. The opponent driver has not deposed before the tribunal and therefore, there was negligence on the part of the driver of the Maruti Car and, therefore, according to our opinion, the finding given by the tribunal for denying interest on the amount of compensation is not convincing. It is not in dispute that the claim petition remained pending before the tribunal for about eight years and for that, the claimants are not at fault and, therefore, in such circumstances, the tribunal ought to have granted interest on the amount of compensation.

Looking to the bare reading of section 171 of the Act, there is specific provision made by the legislature that in case if any amount of compensation is required to be granted by the tribunal, that has to be granted alongwith interest. It is necessary to note that the claim petition has been filed by the claimants with demand of particular amount and the said demand has not been immediately accepted by the Insurance Company and objections were raised and that is how the matter remained pending before the tribunal for such a long period and ultimately the tribunal came to the conclusion

that the claimants are entitled for compensation and, therefore, as per section 171 of the Bombay Motor Vehicles Act, it is the duty of the tribunal to consider the question of interest for which the claimants are entitled. The matter remained pending before the tribunal for about eight years. For that, the appellants are not at all at fault. This aspect has not been taken into consideration by the Tribunal. The Tribunal has also ignored real effect of section 171 of the Act. We are of the view that the tribunal ought to have appreciated that the claim for compensation has been accepted by the tribunal after about seven to eight years and, therefore, now that demand has been accepted with retrospective effect i.e. from the date of the application filed by the claimants and in such circumstances, according to our opinion, the claimants are entitled for interest upon the said amount of compensation awarded by the Tribunal. The reason given by the tribunal for not granting interest on the amount of compensation is the loss of future dependency but this must have to occur in each and every case of death and injury and the compensation will be awarded by the tribunal which will be relating to future and, therefore, according to our opinion, the reason given by the tribunal for denying interest on the amount of compensation is not cogent and convincing because in such cases, whatever compensation will be awarded by the tribunal, ultimately, it will be relating to future and not relating to past and, therefore, the reason given by the tribunal is not proper and valid. According to our opinion, the tribunal has committed grave error in denying interest on the amount of compensation awarded by it.

Now, the question arise as to what would be the rate of interest on the amount of compensation awarded by the tribunal. In case of KAUSHUMA BEGAM AND OTHERS VERSUS NEW INDIA ASSURANCE CO. LTD. AND OTHERS reported in 2001 ACJ 428, the apex court has considered as under in para 23:

"23. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that 'in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf.' Earlier, 12 per cent was found tobe the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest

rate has been lowered. The nationalized banks are now granting interest at the rate of 9 per cent on the fixed deposits for one year. We, therefore,direct that the compensation amount fixed hereinabove shall bear interest at the rate of 9 per cent per annum from the date of the claim made by the appellants. The amount of Rs.50,000.00 paid by the insurance company under section 140 shall be deducted from the principal amount as on the date of its payment and the interest shall be recalculated on the balance amount of the principal sum from such date."

The view taken by the apex court as referred to in the above case has also been recently considered by the apex court in case of H.S. Ahmed Hussain v. Irfan Ahammed reported in 2002 (2) GLR 1825. The relevant observations made in para 7 are reproduced as under:

"7. Learned Counsel thereafter submitted that the High Court was not justified in upholding the award of interest at the rate of 6 per cent per annum and the same should have been awarded at the rate of 9 per cent per annum. Reliance in this connection was placed upon a decision of this court in the case of Kaushnuma Begum (Smt) & Ors.v. New India Assurance Co.Ltd. & Ors. AIR 2001 SC 485 : 2001 (2) SCC 9 wherein this court has noticed that 'earlier 12 % was found tobe the reasonable rate of simple interest. With a change in the economy and the policy of the Reserve Bank of India, the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9 per cent per annum from the date of the claim. " Therefore, it was directed in that case that the claimant was entitled to interest at the rate of 9 % per annum. In our view, the submission is well founded and must be accepted. Accordingly, we hold that the claimants shall be entitled to interest on the aforesaid amount at the rate of 9 per cent per annum from the date of filing of the petitions till realization."

The apex court has observed that earlier, 12 per cent was found to be the reasonable rate of simple interest. With change in the economy and policy of the Reserve Bank of India, rates of interest have been lowered down and even the Nationalized Banks are granting

interest of 9 per cent per annum on the Fixed Deposit for one year. Therefore, considering this aspect, the apex court has fixed the rate of interest 9 per cent. Therefore, following the said decision of the apex court, we are of the view that the claimants should be given interest on the amount of compensation at the rate of 9 per cent per annum from the date of filing of the claim petition and to that extent, the award made by the tribunal is required to be modified.

Accordingly, the appellants original claimants are entitled for the amount of compensation of Rs.1,08,000.00 as awarded by the tribunal with interest thereon at the rate of 9 per cent per annum from the date of filing of the claim petition before the tribunal till the date of payment made by the respondent NO.3 Insurance Company. To that extent, the award made by the tribunal shall stand modified. It is, however, clarified that if the amount of compensation of Rs.1,08,000.00 has already been deposited by the insurance company, then, the insurance company shall pay the interest on the said amount from the date of filing of the claim petition till the date on which such amount has been deposited by the insurance company and in case if the amount of compensation has not been deposited by the insurance company, then, the insurance company shall deposit such amount of compensation with interest at the rate of 9 per cent per annum from the date of filing of the claim petition till the date of such deposit within two months from the date of receipt of copy of this order. This First Appeal is accordingly allowed with no order as to costs.

In view of the above orders made on the main matter, Civil Application No. 413 of 2002 shall not survive. Same is, therefore, disposed of as not surviving with no order as to costs.

Dt. 2.9.2002. (Kshitij R.Vyas,J.)

(H.K. Rathod,J.)

Vyas